

Message Text

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ACTION SCS-06

INFO OCT-01 ARA-10 ISO-00 CA-01 L-03 H-01 HA-05 /027 W
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C O N F I D E N T I A L SECTION 1 OF 2 MANAGUA 1339

E.O. 11652: GDS
TAGS: CARR, EFIN, PINT, SHUM, NU
SUBJECT: THE CHARITON CASE:PARAMETERS OF A POSSIBLE FINANCIAL
SETTLEMENT

REFS: A) 77 MANAGUA 3927, B) MANAGUA 576, C) MANAGUA 693, D) MANAGUA
792

BEGIN SUMMARY: PRESIDENT SOMOZA'S DESIGNATED REPRESENTATIVE FOR
REACHING A FINANCIAL SETTLEMENT OF THE CHARITON AFFAIR HAS AGREED
TO ARRANGE FOR CHARITON TO LEAVE NICARGUA PROVIDED THAT THE LATTER
CAN PRODUCE \$276,000. THIS AMOUNT, PAID PARTLY IN CASH AND PARTLY
WITH A GUARANTEED PROMISSORY NOTE, WOULD PRESUMABLE SETTLE BOTH
CHARITON'S ALLEGED DEBTS TO SOMOZA'S BANK AND A CUSTOMS FINE. A
FINANCE MINISTRY TRIBUNAL HAS RECENTLY UPHELD, BY A SPLIT VOTE,
AN EARLIER JAIL SENTENCE AND FINE AGAINST CHARITON ON SMUGGLING
CHARGES. CHARITON'S LAWYER SAYS THAT CHARITON CANNOT RAISE
\$276,000 AND THAT CHARITON HAS, IN ANY CASE, COUNTERCLAIMS AGAINST
SOMOZA'S BANK. CHARITON IS STILL IN A MILITARY HOSPITAL AND VOWS
HE WILL NEVER RETURN TO JAIL. A COMPROMISE ON A FINANCIAL SETTLEMENT
MAY YET BE REACHED.
END SUMMARY

1. AS NOTED REF C, PRESIDENT SOMOZA HAS TOLD THE AMBASSADOR THAT
THE ONLY PROBLEM REMAINING FOR A RESOLUTION OF THE CHARITON CASE IS
MONEY. (ARTHUR CHARITON HAS BEEN IN JAIL FOR NEARLY 10 MONTHS, WITH-
OUT TRIAL, ON CHARGES OF DEFRAUDING SOMOZA'S BANCO DE CENTROAMERICA.)
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SOMOZA HAS SUGGESTED THAT THE AMBASSADOR DISCUSS WITH DR.
OSCAR SEVILLA SACASA, PRESIDENT OF THAT BANK, THE TERMS OF AN
ACCEPTABLE MONETARY SETTLEMENT.

2. AFTER THE AMBASSADOR MET WITH SEVILLA, THE LATTER CONSULTED
WITH THE BANK'S BOARD AND WITH CUSTOMS OFFICIALS TO WORK OUT DE-
TAILS OF A POSSIBLE SETTLEMENT. ON MARCH 15, SEVILLA TOLD EMBASSY

THAT:

A) BASED ON NOTES SIGNED OR COSIGNED BY CHARITON, THE LATTER ALLEGEDLY OWES BANCO DE CENTROAMERICA APPROXIMATELY \$3.2 MILLION CORDOBAS (EQUIVALENT TO SOME \$460,000). THIS DOES NOT INCLUDE \$72,000 INTEREST CHARGES WHICH THE BANK IS WILLING TO FOREGO.

B) THE BANK IS WILLING TO ALLOW CHARITON CREDIT IN THE AMOUNT OF \$200,000 FOR AN AIRPLANE WHICH IS NOW IN THE BANK'S POSSESSION AND AGAINST WHICH SWAN TEX-

TILES (A FIRM REPORTEDLY BELONGING TO CHARITON'S BROTHER, NORMAN) HAS A CLAIM (SEE BELOW). ALTERNATIVELY, CHARITON CAN SEEK TO SELL THE PLANE HIMSELF AND APPLY ANY HIGHER PROCEEDS HE MIGHT GET TO HIS BANK DEBT.

C) CHARITON CAN SETTLE THE REMAINING \$260,000 DEBT TO THE BANK BY MAKING A CASH DOWNPAYMENT (AMOUNT UNSPECIFIED) AND COVERING THE BALANCE WITH A PROMISSORY NOTE ALLOWING FOR INSTALLMENT PAYMENTS OVER AN UP-TO-FOUR-YEAR PERIOD; SUCH NOTE MUST BE GUARANTEED BY AN ACCEPTABLE FINANCIAL INSTITUTION.

D) CUSTOMS AUTHORITIES HAVE AGREED TO ACCEPT PAYMENT OF A 100,000 CORDOBA FINE (ABOUT \$14,000 IN FINAL SETTLEMENT OF CHARITON'S SMUGGLING SENTENCE(SEE BELOW).

E) SEVILLA EXPRESSED CONFIDENCE THAT THE LOCAL JUDICIARY WOULD PERMIT CHARITON TO LEAVE NICARAGUA FOR MEDICAL TREATMENT ALTHOUGH PENDING RESOLUTION OF THE BANK FRAUD CASE AGAINST HIM. COMMENT: THE IMPLICATION WAS THAT NO FURTHER ACTION ON THE BANK FRAUD CHARGES WOULD BE TAKEN.

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3. CHARITON'S U.S. ATTORNEY, MR. SOL LEVINE OF NORTH CAROLINA (76 MANAGUA 5290, CALLED EMBASSY SAME DAY. EMBOFF RELAYED TO HIM SUBSTANCE OF INFO THAT SEVILLA HAD PROVIDED. LEVINE COMMENTED THAT IT WOULD BE IMPOSSIBLE TO RAISE THAT KIND OF MONEY (ABOUT \$274,000 IN ALL, PLUS THE PLANE), THAT CHARITON WAS BROKE, THAT HIS FAMILY IS NOT WEALTHY AND WAS HAVING TROUBLE RAISING EVEN THE \$25,000 WHICH THEY OFFERED THE BANK, AND THAT THE BANK OWES CHARITON A LOT OF MONEY FOR ASSETS WHICH THE BANK HAD SEIZED. LEVINE COMPLAINED THAT THE BANK'S DEMANDS WERE "STRICTLY JOBBERY."

4. EMBOFF TOLD LEVINE THAT EMBASSY DID NOT WISH TO GET INVOLVED IN NEGOTIATING A FINANCIAL SETTLEMENT BETWEEN CHARITON AND SEVILLA AND THAT IT WAS UP TO CHARITON AND HIS LEGAL REPRESENTATIVES TO DECIDE WHETHER THEY WISHED TO PURSUE THE MATTER FURTHER WITH SEVILLA. EMBOFF SAID THAT EMBASSY WOULD, OF COURSE, CONTINUE TO PRESS FOR A LEGAL DECISION ON THE CRIMINAL CHARGES PENDING AGAINST CHARITON.

5. ANOTHER EMBOFF PROVIDED SAME INFO TO CHARITON. CHARITON WAS QUITE UPSET AT THE AMOUNT DEMANDED. (EARLIER THIS MONTH CHARITON TOLD EMBOFF THAT ALFREDO DURAN, A PROMINENT MIAMI ATTORNEY (PARA 6, REF A) HAD REPORTEDLY VISITED PRESIDENT SOMOZA, IN NICARAGUA RECENTLY. SOMOZA ALLEGEDLY TOLD DURAN THAT CHARITON COULD BE

RELEASED IF THE LATTER PAID \$30,000, PRESUMABLY TO SOMOZA OR HIS BANK. CHARITON DID NOT INDICATE WHETHER HE WOULD PURUSE THE PURPORTED DURAN CHANNEL.)

6. STATUS OF VARIOUS CASES AGAINST CHARITON:

A) TO THE BEST OF OUR UNDERSTANDING, THE BANK FRAUD CASE AGAINST CHARITON IS STILL PENDING A MASAYA COURT DECISION ON APPEALS MADE BY CHARITON AND OTHERS IMPLICATED IN THAT CASE. SHOULD THE LONG-PENDING APPEALS BE TURNED DOWN, CHARITON AND FELLOW INDICTEES CAN DEMAND A TRIAL. THUS FAR, CHARITON HAS NOT BEEN TRIED ON THE FRAUD CHARGES (CHECK KITING) WHICH AN INVESTIGATING JUDGE, BUT NOT SOMOZA'S BANK, BROUGHT AGAINST HIM LAST JUNE. (CHARITON HAD BEEN JAILED WITHOUT CHARGES IN MAY.)

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C O N F I D E N T I A L SECTION 2 OF 2 MANAGUA 1339

B) ON FEBRUARY 28, A THREE-MAN ADVISORY TRIBUNAL OF THE MINISTRY OF FINANCE ISSUED ITS DECISION ON THE APPEAL AGAINST A SMUGGLING SENTENCE, BROUGHT BY CHARITON, TEODORO PICADO LARA (FORMER MANAGER OF SOMOZA'S FABRICA DE HILADOS Y TEJIDOS EL PORVENIR, S.A. TEXTILE PLANT), AND ROBERTO PATAKY PATAKY, (WHO IS ALSO INDICTED WITH CHARITON IN THE BANK FRAUD CASE). NICARAGUAN CUSTOMS HAD ADMINISTRAVELY ISSUED A SENTENCE ON SEPTEMBER 13, 1977, AGAINST THEM (SEE PARA 7, 76 MANAGUA 4315). THE TRIBUNAL UPHELD THAT SENTENCE AGAINST CHARITON, PICADO AND PEDRO PORTU PARRADO (MANAGER OF CHARITON'S DOUBLE KNIT PLANT, TEJIDOS CIRCULARES EL PORVENIR, S.A. WHO FORE-SIGHTEDLY LEFT FOR THE U.S. LAST MAY). THE SENTENCE MANDATED SIX-MONTHS IMPRISONMENT FOR EACH, AND A COLLECTIVE FINE OF 18.3 MILLION CORDOBAS (EQUVALENT TO ABOUT \$2.6 MILLION) DR. HORACIO ARGUELLO CARAZO, THE CONSERVATIVE PARTY MEMBER OF THE TRIBUNAL, HOWEVER, FOUND THAT THERE WAS INSUFFICIENT PROOF OF CHARITON'S CULPABILITY IN THE SMUGGLING MATTER. (THE TRIBUNAL PROVISIONALLY ACQUITTED PATAKY).

C) CHARITON CAN APPEAL THE CUSTOMS SENTENCE TO THE SUPREME COURT. SINCE HE HAS ALREADY SERVED MORE THAN SIX MONTHS IN JAIL, WE BELIEVE THAT THE TIME HE HAS SPENT THERE PENDING APPEAL OF THE BANK FRAUD

INDICTMENT COULD BE APPLIED TO THE CUSTOMS SENTENCE. CUSTOMS AUTHORITIES MAY HAVE TAKEN THIS AND ARGUELLO'S DISSENTING OPINION INTO ACCOUNT WHEN THEY ALLEGEDLY TOLD SEVILLA THAT CHARITON COULD SETTLE THE BALANCE OF THE CUSTOMS SENTENCE AGAINST HIM BY PAYING ONLY \$14,000, A RELATIVELY SMALL SHARE OF THE \$2.6 MILLION JOINT FINE.

D) CHARITON'S ALLEGED DEBT TO SOMOZA'S BANK SEEMS TO BE THE KEY MATTER REMAINING TO BE SETTLED. THIS IS ALSO THE MOST COMPLICATED
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ISSUE INASMUCH AS CHARITON HAS COUNTERCLAIMS AGAINST THE BANK; CHARITON'S LAWYER, LEVINE, HAS PENDING CLAIMS AGAINST SOMOZA'S EL PORVENIR TEXTILE COMPANY; AND, THERE IS A DISPUTE OVER OWNERSHIP OF, AND IENS ON, THE AIRPLANE MENTIONED IN PARA 2(B) ABOVE.

7. COMMENT: THIS CASE IS A VIVID, IF COMPLEX EXAMPLE OF HOW JUSTICE IS ADMINISTERED IN NICARAGUA, ESPECIALLY WHEN SOMOZA INTERESTS ARE INVOLVED. WE SUSPECT THAT CHARITON, WHO IS STILL UNDERGOING TREATMENT IN MANAGUA'S MILITARY HOSPITAL FOR A DETERIORATED DIABETIC CONDITION (REF D), MAY SEEK TO FIND ANOTHER SOLUTION TO HIS PROBLEM. HE HAS TOLD EMBOFFS THAT HE WILL, IN ANY CASE, NEVER RETURN TO HIS JAIL CELL.

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